

No. 91-835

Supreme Court, U.S.

FILED

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IN THE SUPREME COURT OF THE  
UNITED STATES

October Term, 1991

RICHARD CALDER, Petitioner

v.

RETA JOB, Respondent

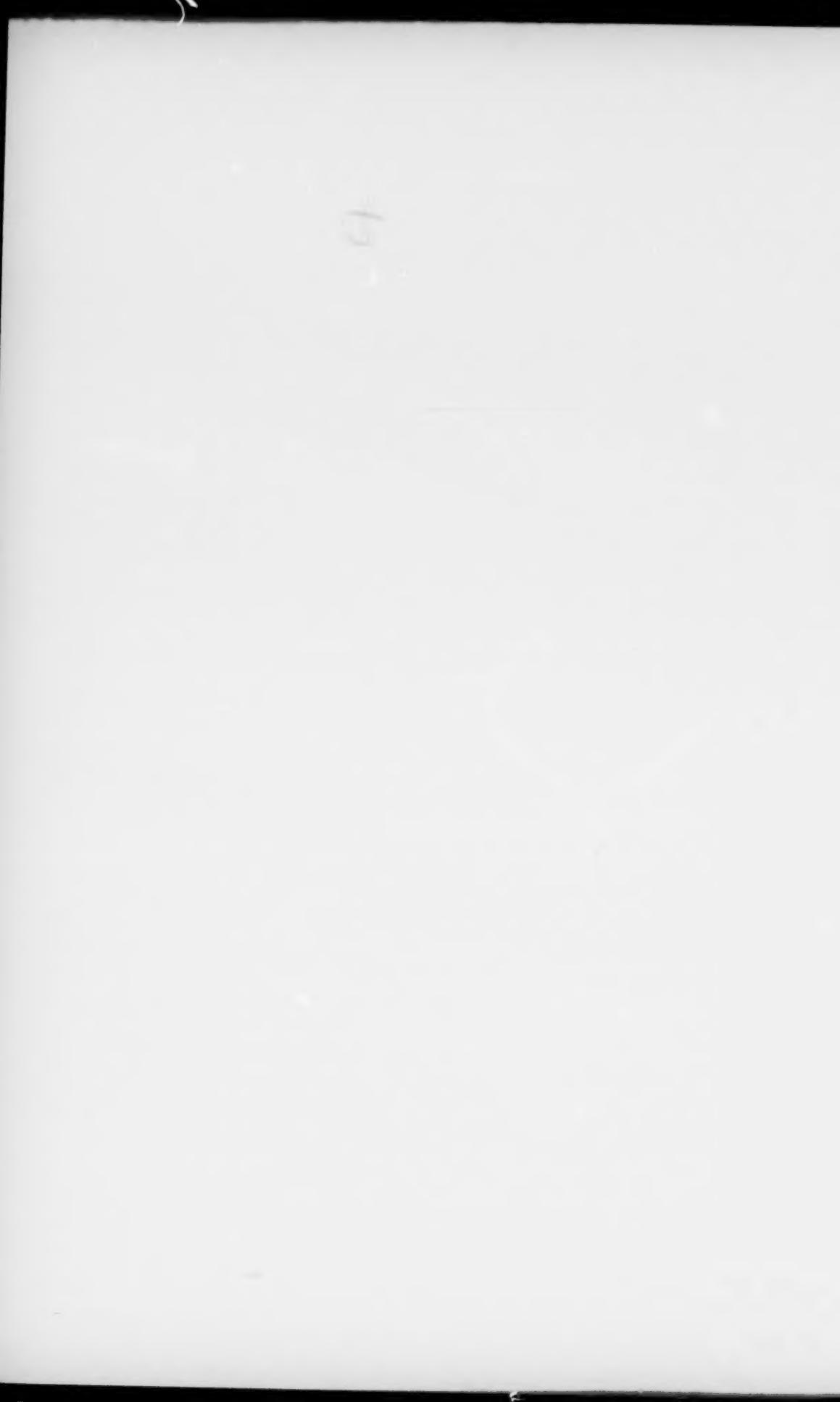
PETITION FOR WRIT OF CERTIORARI TO  
THE SUPREME COURT OF THE STATE OF UTAH

PETITION FOR WRIT OF CERTIORARI

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## QUESTION PRESENTED FOR REVIEW

Pursuant to Title 28 U.S.C. Section 1334, did the District Court of the Third Judicial District in and for Salt Lake County, State of Utah, have subject matter jurisdiction in Case No. 84-5436 to render a judgment in the amount of \$54,564.00 on February 24, 1986, regarding a pre-petition claim of a creditor, Reta Job, against a debtor, Richard Calder, who at the time of the judgment was in a Chapter 13 proceeding, Case No. 84A-00492, which case had been filed approximately two years prior on February 23, 1984, in the United States Bankruptcy Court for the District of Utah?

LIST OF ALL PARTIES

All parties appear in the caption of the  
case.

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## CITATIONS TO OPINIONS BELOW

Judgment of Judge J. Dennis Frederick in Civil No. C-84-5436 on February 24, 1986, in the District Court of the Third Judicial District in and for Salt Lake County, State of Utah. Appendix C, Page C-1.

Order of Judge J. Dennis Frederick in Civil No. C-84-5436 on March 4, 1991, in Civil No. C-84-5436, in the District Court of the Third Judicial District in and for Salt Lake County, State of Utah, which was appealed to the Supreme Court of the State of Utah. Appendix B, Page B-1.

Order of the Supreme Court of the State of Utah on June 13, 1991, in No. 910137 840905436CV, denying motion to reverse because of manifest error. Appendix A, Page A-1.

## STATEMENT OF JURISDICTIONAL GROUNDS

Rule of entry of judgment or decree  
sought to be reviewed. A denial on June 13, 1991, by the Supreme Court of the State of Utah, of a motion for summary disposition by petitioner.

Statutory provision conferring jurisdiction on this Court. 28 U.S.C. Section 1257 and Rule 10.1(b) and 10.1(c) of the Rules of the Supreme Court of the United States.

#### STATUTES INVOLVED IN THE CASE

Title 28 U.S.C. Section 1334. Bankruptcy cases and proceedings.

(a) Except as provided in subsection (b) of this section, the district courts shall have original and exclusive jurisdiction of all cases under Title 11.

(b) Notwithstanding any Act of Congress that confers exclusive jurisdiction on a court or courts other than the district courts, the district courts shall have original but not exclusive jurisdiction of all civil proceedings arising under title 11, or arising in or related to cases under Title 11.

(c) (1) Nothing in this section prevents a district court in the interest of justice, or in the interest of comity with State courts or respect for State law, from abstaining from hearing a particular proceeding arising

under title 11 or arising in or related to a case under title 11.

(2) Upon timely motion of a party in a proceeding based upon a State law claim or State law cause of action, related to a case under title 11 but not arising under title 11 or arising in a case under title 11, with respect to which an action could not have been commenced in a court of the United States absent jurisdiction under this section, the district court shall abstain from hearing such proceedings if an action is commenced and can be timely adjudicated, in a State forum of appropriate jurisdiction. Any decision to abstain made under this subsection is not reviewable by appeal or otherwise. This subsection shall not be construed to limit the applicability of the stay provided for by section 362 of title 11, United States Code, as such section applies to an action affecting the property of the estate in bankruptcy.

(d) The district court in which a case under title 11 is commenced or is pending

shall have exclusive jurisdiction of all property, wherever located, of the debtor as of the commencement of such case, and of property of the estate.

Title 28 U.S.C. Section 157. See Appendix D, Page D-1.

#### STATEMENT OF THE CASE

1. On February 23, 1984, Richard Calder filed a Chapter 13 bankruptcy, Case No. 84A-00492, in the United States Bankruptcy Court for the District of Utah. Appendix E, Page E-1.

2. This case was in force from its filing on February 23, 1984, until dismissal on August 13, 1986. Appendix E, Page E-1.

3. On October 13, 1983, Dennis and Reta Job filed a Chapter 7 bankruptcy, Case No. 83C-02769, in the United States Bankruptcy Court for the District of Utah.

4. Richard Calder was the attorney of record for the Jobs in this Chapter 7.

5. Calder allegedly committed professional legal malpractice in the period from October 13, 1983 to January 9, 1984, in the

performance of his legal duties pertaining to this Chapter 7 of the Jobs.

6. As of February 23, 1984, the filing date of Calder's Chapter 13, the Jobs had a state law claim against Calder because of alleged professional legal malpractice committed in handling the Job Chapter 7.

7. As of February 23, 1984, the Job claim was an unliquidated, disputed claim against Calder.

8. Calder, at the time of filing his Chapter 13 on February 23, 1984, did not have any knowledge of the Job claim for professional malpractice. The Jobs also did not have knowledge as of February 23, 1984, of the existence of their claim against Calder.

9. The Jobs, in the Fall of 1984, long after the inception of the Calder Chapter 13, filed a suit against Calder in the Third Judicial District Court in and for Salt Lake County, State of Utah. In January 1986, after a one-day bench trial, the Jobs obtained a judgment in the amount of \$54,564.00

for professional legal malpractice against Calder. Appendix C, Page C-1.

10. The Jobs were not aware of the Chapter 13 filing of Calder until sometime in February 1986, shortly prior to the entry of the State court judgment against Calder.

11. Judge J. Dennis Frederick of the Third Judicial Court of Salt Lake County, State of Utah, who rendered the judgment was notified in writing on February 5, 1986, of the pendancy of the Calder Chapter 13 after the trial and approximately three weeks prior to entry of the judgment.

12. The notice stated that the alleged acts complained of by the Plaintiff arose prior to February 23, 1984. Appendix F, Page F-1.

13. Judge Frederick, although on notice of the bankruptcy, chose to ignore the Calder Chapter 13 and signed the judgment.

14. The Jobs, on May 5, 1987, filed a proof of claim in the amount of \$54,543.90 in the Calder Chapter 13 case. Appendix G, Page G-1.

15. Calder's belated notice of his pending Chapter 13 to the Jobs and Judge Frederick after the claim had been litigated in the State court was because Calder had at first when the Job suit was filed erroneously thought the Job claim arose post-petition, but later correctly realized the Job claim arose prior to February 23, 1984, the date of the filing of the Calder Chapter 13.

16. The judgment entered on February 24, 1986, created a judicial lien on all real property of Richard Calder located in Salt Lake County, pursuant to U.C.A. 78-22-1.

**STAGE IN PROCEEDING IN WHICH FEDERAL QUESTION OF JURISDICTION WAS RAISED**

The Federal question that the State district court lacked jurisdiction was first raised on January 22, 1991, by way of motion and supporting memorandum. Appendix I, Page I-1.

**ARGUMENT**

I. THERE ARE IMPORTANT AND SPECIAL REASONS FOR THE SUPREME COURT OF THE UNITED STATES TO EXERCISE JUDICIAL DISCRETION FOR GRANTING A PETITION FOR A WRIT OF CERTIORARI IN THIS MATTER.

The Federal question involved is the scope of jurisdiction pursuant to Title 28 U.S.C. Section 1334 of the Bankruptcy Court over a pre-petition claim against a debtor such as Calder who is in a pending Chapter 13 case in which there has not been any abstention action taken pursuant to Title 28 U.S.C. Section 1334(c)(1) or Section 1334(c)(2).

In such a fact pattern, does the state court have, as to a pre-petition bankruptcy claim, concurrent jurisdiction with the jurisdiction of the United States District Court or did the State court clearly lack any subject matter jurisdiction over such a pre-petition bankruptcy claim?

The Bankruptcy Reform Act of 1978 which was the culmination of years of extensive study was enacted precisely in order to resolve such a jurisdictional dispute.

The Bankruptcy Reform Act of 1978 directly conflicts with the June 13, 1991 decision of the Utah Supreme Court.

The decision of the Supreme Court of the

State of Utah decided this Federal jurisdictional question in a way that conflicts with the following decisions of the Supreme Court of the United States:

Northern Pipeline Construction Co. v. Marathon Pipeline Co., 458 U.S. 50, 105 S.Ct. 2858, 73 L.Ed.2d 598 (1982).

Granfinanciera S.A. v. Nordberg, --- U.S. ---, 109 S.Ct. 2782, 106 L.Ed.2d 26 (1989).

Katchen v. Landry, 382 U.S. 323, 15 L.Ed.2d 391, 88 S.Ct. 467 (1966).

Kalb v. Feuerstein, 308 U.S. 433, 60 S.Ct. 343, 84 L.Ed. 370 (1940).

Pepper v. Litton, 308 U.S. 295, 60 S.Ct. 238, 84 L.Ed. 281 (1939).

Galloway v. Benton, 336 U.S. 132, 69 S.Ct. 435, 93 L.Ed. 553 (1949).

United States Fidelity and Guaranty Co. v. Bray, 225 U.S. 205, 56 L.Ed. 1055, 32 S.Ct. 620 (1912).

In re Watts and Sachs, 190 U.S. 1, 40 L.Ed. 933, 23 S.Ct. 718 (1902).

The decision of the Supreme Court of the State of Utah decided this Federal jurisdictional question in a way that conflicts with twenty-nine cases in nine different United States court of appeals. The state court of last resort in Utah is in conflict

with the following United States Court of Appeals:

Second Circuit Court of Appeals:

In re Ben Cooper, Inc., 896 F.2d 1394 (2nd Cir. 1990).

In re Brown, 734 F.2d 119 (2nd Cir. 1984).

In re Manville Forest Products Corp., 896 F.2d 1384 (2nd Cir. 1990).

Third Circuit Court of Appeals:

Begley v. Philadelphia Elec. Co., 780 F.2d 46 (3rd Cir. 1989).

In re Bobroff, 766 F.2d 797 (3rd Cir. 1985).

In re Meyertech, 831 F.2d 410 (3rd Cir. 1987).

Pacor, Inc. v. Higgins, 743 F.2d 984 (3rd Cir. 1984).

Fourth Circuit Court of Appeals:

Nationwide Mut. Fire Ins. Co. v. Eason, 736 F.2d 130 (4th Cir. 1984).

In re A.H. Robins Co., 788 F.2d 994 (4th Cir. 1985) cert. denied, 479 U.S. 876, 107 S.Ct. 251, 93 L.Ed.2d 177 (1986).

Fifth Circuit Court of Appeals:

Hudson Shipbuilders, Inc., 794 F.2d 1051 (5th Cir. 1986).

Matter of Majestic Energy Corp., 835 F.2d 87 (5th Cir. 1988).

In re Modern Boats, 775 F.2d 619 (5th Cir. 1985).

State of Tex. v. Wellington Resources Corp., 706 F.2d 533 (5th Cir. 1983).

In re Wood, 825 F.2d 90 (5th Cir. 1987).

In re Dogpatch, U.S.A., Inc., 810 F.2d 782 (5th Cir. 1987).

Sixth Circuit Court of Appeals:

Robinson v. Michigan Consol. Gas Co., Inc., 918 F.2d 579 (6th Cir. 1990).

In re Salem Mortgage Co., 783 F.2d 626 (6th Cir. 1986).

Seventh Circuit Court of Appeals:

Diamond Mortg. Corp. of Illinois v. Sugar, 913 F.2d 1233 (7th Cir. 1990).

Home Ins. Co. v. Cooper and Cooper, Ltd., 889 F.2d 746 (7th Cir. 1989).

Matter of Xonics, Inc., 813 F.2d 127 (7th Cir. 1987).

Eighth Circuit Court of Appeals:

National City Bank v. Coopers and Lybrand, 802 F.2d 990 (8th Cir. 1986).

State of Mo. v. U.S. Bankruptcy Court, etc., 647 F.2d 768 (8th Cir. 1981).

Ninth Circuit Court of Appeals:

In re Fietz, 852 F.2d 455 (9th Cir. 1988).

Wilson v. Bill Barry Enterprises, Inc., 822 F.2d 859 (9th Cir. 1987).

Kiaohoni Ohana, Ltd., Inc. v. Sutherland, 873 F.2d 1302 (9th Cir. 1989).

Tenth Circuit Court of Appeals:

Matter of Colorado Energy Supply, Inc.,  
728 F.2d 1283 (10th Cir. 1984).

Delgado Oil Co., Inc. v. Torres, 785 F.2d  
857 (10th Cir. 1986).

In re Gardner, 913 F.2d 1515 (10th Cir.  
1990).

The integrity of the Bankruptcy Code, the integrity, consistency and sovereignty of the Federal judicial system itself on this all-important jurisdictional question demand that this unarticulated aberration from well-settled federal bankruptcy jurisdictional law be corrected. The ultimate power to so correct such an aberration of the highest state court resides exclusively and necessarily in the Supreme Court of the United States.

II. HISTORICAL BACKGROUND OF BANKRUPTCY JURISDICTION

The Bankruptcy Reform Act of 1978 was enacted on November 2, 1978, and became effective on October 1, 1979. The 1978 Reform legislation, which is the jurisdictional basis of the present Code, enacted sweeping changes. This reform legislation restructured the judicial system to correct and overcome

the shortcomings which were uniformly found to have pervaded the earlier system under the 1898 Bankruptcy Act.

Collier on Bankruptcy, the leading treatise on Bankruptcy Law, states at Vol. I, Paragraph 1.03 at p. 1-10, that:

Finally, in recognition of the fact that the bankruptcy court is specialized (and should be, in order to affirmatively aid the functioning of the bankruptcy process); that its judges are specialists; and that economy of time and resources is desirable; the bankruptcy court was given an all-pervasive grant of jurisdiction. This "comprehensive grant of jurisdiction to the bankruptcy courts" (emphasis added) over all controversies arising out of any bankruptcy or rehabilitation case would greatly diminish the basis for litigation of jurisdictional issues which consumes so much time, money and energy of the bankruptcy system and of those involved in the administration of debtors' affairs.\*

### III. STATUTORY BASIS FOR BANKRUPTCY JURISDICTION

The basis for the jurisdiction of the United States District Court for the District of Utah in the 1978 Reform Act was 28 U.S.C.

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\*House Report, Rep. No. 939, 95th Congress, 2nd Sess. at 46.

Section 1471 which was later amended in 1984 by Public Law No. 98-353, entitled the Bankruptcy Amendments, and Federal Judgeship Act of 1984. For the jurisdictional provisions of 28 U.S.C. Section 1471 of the Reform Act, see Appendix H, Page H-1. For 28 U.S.C. Section 157, see Appendix D, Page D-1. For 28 U.S.C. Section 1334, see Page 2.

Collier on Bankruptcy at Vol. I, Paragraph 3.01, p. 3-20, discusses jurisdiction over Title 11 cases under 28 U.S.C. Section 1334(a):

Section 1334(a) is identical to superseded section 1471(a) of Title 28 added by the Bankruptcy Reform Act of 1978. 28 U.S.C. Section 1471(c) transferred to the bankruptcy courts all the jurisdiction granted the district courts by section 1471(a) and (b). A similar, although most assuredly not identical, function is performed by 28 U.S.C. Section 157(a).

It is quite apparent that "cases" under title 11 are to be distinguished from civil proceedings arising under Title 11 or civil proceedings related to or arising in title 11 cases. The former is the subject of section 1334(a) while the latter are covered by section 1334(b). Out of an abundance of caution, however, Congress inserted in section 1334(a) the introductory phrase "Except as provided in subsection (b) of this section." This phrase reinforces the concept that

the jurisdiction of the district courts over title 11 "cases" is to be original and exclusive (emphasis added), while the jurisdiction over civil proceedings arising under title 11, or arising in title 11 cases, or related to those cases, is to be original but not exclusive (emphasis added).

Collier on Bankruptcy at Vol. I, Paragraph 3.01 at P. 3-21, discusses jurisdiction over civil proceedings under 28 U.S.C. Section 1334(b):

Like Section 1334(a), Section 1334(b) is identical to its statutory predecessor, 28 U.S.C. Section 1471(b), added by now-repealed Section 241(a) of the Bankruptcy Reform Act of 1978. The primary distinction between the grants of jurisdiction of subsection, (a) and (b) is that, while the former is original and exclusive (emphasis added), the latter is original but not exclusive. This nonexclusivity of jurisdiction is a necessary corollary to the power of the district court granted in subsection (c) of section 1334, to abstain from hearing certain types of proceedings (emphasis added).

The intent of Congress was to bring all bankruptcy-related litigation as an initial matter within the umbrella of the district court.

Collier on Bankruptcy, in Vol. I, Paragraph 3.01 at P. 3-69, discusses abstention under 28 U.S.C. Section 1334(c), thus:

Section 1334(c)(1) is not unlike the philosophies that governed abstention under the 1898 Bankruptcy Act and the Bankruptcy Reform Act of 1978. Under those two statutes, a bankruptcy judge could abstain from hearing a matter, even if the court had jurisdiction over the controversy.

.....

Section 1334(c)(1) continues the philosophy that governed abstention under its predecessors. It is not mandatory; it merely gives the district court the discretion (emphasis added) to abstain if the abstention is in the interest of justice, or in the interest of comity with State courts or respect for State law.

.....

Section 1334(c)(1) gives the district court the power to abstain from hearing civil proceedings arising under title 11, or arising in or related to cases under title 11. To be contrasted is section 1334(c)(2) which is applicable only to proceedings based upon state law claims or causes of action "related to" a case under title 11 but not arising under title 11 or arising in a case under title 11. Section 1334(c)(1) thus applies to core matters as well as to related matters.

#### IV. RELEVANT ANALYTIC ELEMENTS IN THE QUESTION OF WHETHER THE STATE DISTRICT COURT HAD JURISDICTION TO TRY THE JOB CLAIM AGAINST CALDER.

The position of Calder is that the State District Court clearly lacked subject matter jurisdiction to have the Job claim

litigated before the state court. The Job claim, which arose pre-petition, was unliquidated and disputed as of February 23, 1984, the date Calder commenced his Chapter 13 and the date which original jurisdiction as a matter of law rested in the United States District Court for the District of Utah. This original jurisdiction as to the Job pre-petition claim remained with the Federal court from the commencement of the Calder Chapter 13 case until the Chapter 13 case was dismissed on August 13, 1986. The Federal jurisdiction was never at any time divested from its original placement in the United States District Court for the District of Utah by any abstention action brought by any party or by the court pursuant to 28 U.S.C. Section 1334(c)(1) or Section 1334(c)(2).

The remainder of the argument will address three compelling statutory reasons which clearly indicate the clear lack of any subject matter jurisdiction in the State District Court. The reasons argued track the

framework of Title 28 and if petitioner prevails on any one of the three below-stated propositions, then the State District Court clearly lacked subject matter jurisdiction.

1. The Job Claim as of February 23, 1984, pursuant to 28 U.S.C. Section 1334(b) was a civil proceeding arising in the Calder 1984 Chapter 13 and was therefore a core matter under 28 U.S.C. Section 157(b)(2)(B).

2. The Job Claim as of February 23, 1984, pursuant to 28 U.S.C. Section 1334(b) was a civil proceeding related to the Calder Chapter 13.

3. As of the commencement of the Calder Chapter 13 case on February 23, 1984, the United States District Court for the District of Utah had exclusive jurisdiction of all of the property of Calder.

V. THE JOB CLAIM AS OF FEBRUARY 23, 1984, PURSUANT TO 28 U.S.C. SECTION 1334(b) WAS A CIVIL PROCEEDING ARISING IN THE CALDER CHAPTER 13 AND WAS THEREFORE A CORE MATTER UNDER 28 U.S.C. SECTION 157(b)(2)(B).

The case of In re Meyertech Corp., 831 F.2d 410 (3rd Cir. 1987) as in the Job claim

against Calder involved a pre-petition claim against the debtor. The facts are as follows:

Southeastern Sprinkling Company was engaged in the business of designing and installing industrial sprinkler systems. Southeastern was involved in an ongoing business relationship with Meyertech Corporation, a supplier of sprinkler system equipment. This fact is similar to the instant case inasmuch as Calder was engaged as legal counsel for the Jobs for a period of approximately four months prior to Calder filing his Chapter 13 case in 1984.

Southeastern purchased Meyertech's fittings and incorporated them in sprinkler systems in a number of the construction projects. Sometime after the newly-installed systems were activated, Southeastern began receiving complaints from several contractors and owners of the projects about water damage apparently caused by leaks in the sprinkler system. Initially unable to determine the cause of the leaking, Southeastern limited its response to repair of the water damaged

ceilings according to its contractual responsibility.

Investigation of the origin of the leak revealed it to be in the area of the fittings supplied by Meyertech. Accordingly, Southeastern informed Meyertech and requested its assistance in remedying the problem. Meyertech acknowledged that the leakage was caused by the composition of the gaskets, a component of the fittings supplied, which could be corrected by replacement. Meyertech supplied Southeastern with new gaskets to remedy the problem.

Southeastern then set to the task of removing and replacing the previously-installed gaskets. Southeastern accomplished this replacement in conjunction with repairing the ceilings damaged by the leaking fittings.

On August 28, 1981, Meyertech petitioned for reorganization under Chapter 11 of the Bankruptcy Code. At the time of filing, Southeastern had a pre-petition right to payment from Meyertech in an alleged amount of \$273,627.00. This is similar to the

instant case inasmuch as at the time of the Calder filing on February 23, 1984, Job also had a pre-petition claim against Calder although the exact amount was not liquidated and would be disputed but unlike in Meyertech, neither Job nor Calder were at the time of Calder's filing on February 23, 1984, aware of the disputed claim.

Southeastern filed a proof of claim in the Meyertech Chapter 11 shortly after the filing date in the amount of \$273,627.00. Job filed a proof of claim in the Calder Chapter 13 case in the amount of \$54,543.90, claiming that he had a right to payment from Calder as of the commencement of the Chapter 13 in the amount of \$54,543.90. Job's claim, like Southeastern's, proof of claim, was filed sometime after Calder filed his Chapter 13 on February 23, 1984.

Meyertech, as did Calder, disputed the claim and filed an objection to the proof of claim, denying owing any obligation to Southeastern. In Meyertech, there was a stipulated settlement but this was later followed

by an adversary action in the bankruptcy court in which Southeastern sued Meyertech on breach of implied warranty of merchantability. Meyertech claimed an offset of \$43,032.32. The net result of the suit was a judgment of \$31,119.82 in favor of Meyertech, the debtor.

Southeastern appealed to the District Court urging vacation of the award to Meyertech claiming the matter was not a core proceeding as defined by 28 U.S.C. Section 157(b). The creditor, Southeastern, requested the District Court to render additional findings of fact consistent with its de novo power of review of non-core matters.

The District Court denied the request for de novo review and affirmed the bankruptcy court's finding that the issue was core.

The issue on appeal to the Third Circuit Court of Appeals was whether the action tried in the bankruptcy court was core or was not core. The Third Circuit Court of Appeals affirmed the finding of the District Court that the matter was core and stated:

A review of the history of the jurisdiction of the bankruptcy court assists in the resolution of what is or is not a core proceeding. With the passage of the Bankruptcy Reform Act of 1978, Congress vested the district courts with original and exclusive jurisdiction of all cases under title 11. 28 U.S.C. Section 1471 (repealed). The district court also had "original but not exclusive jurisdiction of all civil proceedings arising under title 11 or arising in or related to cases under title 11." Section 1471(b) (repealed). Section 1471(c) (repealed) then conferred the bankruptcy court within the district where the title 11 case commenced with all of the jurisdiction granted to the district court by Section 1471.

Id. at 415.

.....

Section 157(b)(2) provides a non-exhaustive list of core proceedings, namely (1) all matters concerning the administration of the bankruptcy estate, (2) allowance or disallowance of claims against the estate, (3) counterclaims by the estate against persons filing claims against the estate, and (4) other provisions affecting liquidation of the assets of the estate. 28 U.S.C. Section 157(b)(2)(A); (b)(2)(B); (b)(2)(C); and (b)(2)(O).

Id. at 416.

.....

Review of the cases struggling for a precise point of delineation between core and non-core proceedings reveals a common factor which clearly distinguishes them from the present matter--

they all refer to cases commenced by the debtor either prior to or post-bankruptcy petition. Herein, we are confronted with an action brought by a creditor and we have found no cases where the core/non-core issue has arisen in this context.

We conclude that the reason for the dearth of cases on this converse situation is premised on the fact that this state law contract matter was initiated when Southeastern filed its proof of claim. This is not a situation akin to the above-mentioned cases where a debtor brought suit against either a creditor or a third party, but rather, is an action which has as its foundation, a question of the validity of a claim which accrued under state law against the bankrupt estate prior to bankruptcy.

"Claim" is defined in 11 U.S.C. Section 101(4)(A) as: "Right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured; or ..." Clearly Southeastern's breach of warranty action falls within this definition since it represents a right to payment for losses suffered as a result of Meyertech's supplying unfit goods. We are thus persuaded that 28 U.S.C. Section 157 (b) (2) (B), defining allowance or disallowance of claims against the estate as a core proceeding, governs the outcome of this issue.

Id. at 417.

We thus conclude that Southeastern's cause of action based upon state law is correctly characterized as a claim against the bankrupt estate of Meyertech.

As such, the litigation of its merits is a core proceeding under the bankruptcy judge's jurisdiction as provided by Section 157(b)(2)(B). The filing of the claim by Southeastern created this action in bankruptcy court, and this is the proper forum for its adjudication. By its very nature it fits directly under the more specific definition of a core proceeding under Section 157(b)(2)(B), rather than under the umbrella provisions of Section 157(b)(2)(A) or (b)(2)(O).

Southeastern's contention that consent to the bankruptcy court's jurisdiction cannot be inferred from its initiation of this action by proof of claim is indeed a strained argument. This appeal entails a title 11 matter and regardless of how or where commenced in the federal court system, it would have been referred to the jurisdiction of the bankruptcy court. We do not infer any conclusions of law from Southeastern's filing of the proof of claim; in fact, we acknowledge that Southeastern had no choice as to its forum of adjudication since its cause of action is a case arising under title 11 (emphasis added).

Id. at

The case of In re Meyertech Corp., supra, thus involved the question of the validity of a proof of claim which accrued, as in the Job-Calder matter, prior to the bankruptcy. The Third Circuit Court of Appeals held that such a question of claim validity pursuant to 28 U.S.C. Section 157(b)(2)(B) was

core. Job's cause of action, as was true of the Southeastern claim, was a pre-petition claim against the bankrupt estate of Calder and was therefore a core matter.

Another case involving a claim against the estate is Matter of Colorado Energy Supply, Inc., 728 F.2d 1283 (10th Cir. 1984). This case involved a claim by a creditor to the proceeds of a sale of debtor's property. The Bankruptcy Court for Colorado took jurisdiction and disbursed proceeds of a sale allowing certain costs. One of the creditors of the debtor, a landlord, was denied her claim for rent. It is similar to the Job claim inasmuch as it involves a pre-petition claim against the estate. The Bankruptcy Court ruled that the landlord's claim for rent was not an allowable cost of the sale. On appeal the landlord contended that the proceeding was related to Title 11 and therefore did not become final for purposes of appeal until the sale was approved by the District Court. The Tenth Circuit Court of Appeals in essence held the claim for rent from the estate was

core stating:

It is plain that the matters before us are contested matters concerning the administration of the estate, and allowance of and objection to claims against the estate. All these things are integral to the administration of the bankruptcy estate.

Id. at 1286.

The case of In re Manville Forest Products Corp., 896 F.2d 1384 (2nd Cir. 1990) involved a Chapter 11 filing on August 26, 1982, by M.F.P., a wholly-owned subsidiary of Manville Corporation. Prior to the filing, M.F.P. and Gulf, an oil and gas exploration company wholly-owned by Gulf States Oil and Refining Company, entered into a hydrocarbon exploration agreement.

Gulf timely filed a proof of claim alleging a breach of contract seeking \$16,035,000.00 damages. This is similar to the instant case inasmuch as it involves a right to payment alleged to be owing a creditor as of the filing date and a proof of claim filed as a result of this claim. An objection to the proof of claim was filed by Manville which is another similarity to

the instant case. The Bankruptcy Court held that M.F.P. fully sustained its objection to Gulf's proof of claim and accordingly expunged the claim.

The Bankruptcy Court held that the adversary proceeding constituted a core proceeding within the meaning of 28 U.S.C. Section 157 reasoning the adversary proceeding involved a plain and simple objection to a claim and accordingly was clearly a core matter. Gulf appealed to the District Court which affirmed the Bankruptcy Court. On appeal the Second Circuit Court of Appeals affirmed the matter as core stating:

The adversary proceeding at issue here involves a simple objection to a proof of claim and clearly falls within the literal language of Section 157(b) (2) (B) , which provides that all proceedings involving the "allowance or disallowance of claims against the estate" (other than proceedings involving "the liquidation or estimation of contingent or unliquidated personal injury tort or wrongful death claims against the estate for purposes of distribution in a case under title 11") are core matters. Despite this statutory language, however, Gulf contends that its state law breach of contract claim is merely "related to" the bankruptcy case, and that such claim would have been filed in the state court but for the bankruptcy filing. Thus,

Gulf argues, Marathon requires such claim to be adjudicated by an Article III judge. We disagree.

Marathon, supra, 458 U.S. at 50, which invalidated the broad grant of jurisdiction to bankruptcy courts provided for in the Bankruptcy Act of 1978, 28 U.S.C. Section 1471 (Supp. IV 1980), involved a pre-petition breach of contract action brought by the Chapter 11 debtor in the bankruptcy court against the defendant. The defendant had not filed a proof of claim and apparently had no other connection with the bankruptcy case. Justice Brennan, writing for a plurality, distinguished "the restructuring of debtor-creditor relations which is at the core of the federal bankruptcy power," from the "adjudication of state-created private rights." Marathon, supra, 458 U.S. at 71. The Court held that state-created private rights, such as the debtor's breach of contract claim must be adjudicated by an Article III judge. Id. at 69-70, 84 see also Cooper, supra, 896 F.2d at 1398.

While it is true that the instant adversary proceeding involved a pre-petition breach of contract claim, as in Marathon, there is one crucial distinction which Gulf ignores. Unlike the defendant in Marathon, Gulf filed a proof of claim in M.F.P.'s Chapter 11 case. By filing a proof of claim, Gulf submitted itself to the equitable power of the bankruptcy court to disallow its claim. Granfinanciera, S.A. v. Nordberg, 109 S.Ct. 2782, 2799, n. 14 (1989). As the Fifth Circuit aptly explained,

"A claim against the estate is instituted by filing a proof of claim as provided by the bankruptcy rules. The filing of the proof invokes the

special rules of bankruptcy concerning objections to the claim, estimation of the claim for allowance purposes, and the rights of the claimant to vote on the proposed distribution. Understood in this sense, a claim filed against the estate is a core proceeding because it could arise only in the context of bankruptcy. Of course, the state-law right underlying the claim could be enforced in a state court proceeding absent the bankruptcy, but the nature of the state proceeding would be different from the nature of the proceeding following the filing of a proof of claim.

Id. at 1389.

.....

In view of the foregoing, we hold that the instant adversary proceeding, which involves the determination of an objection to a proof of claim filed in the bankruptcy case, is clearly at the core of the federal bankruptcy function of restructuring debtor-creditor rights, implicating the unique powers of bankruptcy courts.

Id. at 1390.

The case of In re Hudson Shipbuilders, Inc., 794 F.2d 1051 (5th Cir. 1986) involved a secured creditor, Blackburn-Bliss Realty, Inc., who held a promissory note issued to it by Hudson Shipbuilders, Inc. for \$1,600,000.00. The note was secured by a mortgage. The mortgage was a first lien on

Hudson's property. Allied Bank was the holder of a second mortgage on the Hudson property in the amount of \$2,800,000.00. Hudson defaulted to the first mortgage and on February 9, 1983, filed for relief under Chapter 11. Blackburn-Bliss responded by filing a proof of claim in the bankruptcy court for the full amount of the claim, including interest and attorney fees. The automatic stay was later lifted and foreclosure followed. There was a dispute as to the proper amount of attorney fees pursuant to 11 U.S.C. Section 506. Allied Bank, the second mortgage holder, filed a motion requesting the bankruptcy court to determine the amount of attorney fees which Blackburn-Bliss was properly entitled to in connection with its note.

Hudson, as in the Calder case, involved a pre-petition claim although secured in this instance, a proof of claim filed by the creditor, and an objection to the proof of claim, all elements shared with the Calder case. The Bankruptcy Court had jurisdiction

to fix the amount of attorney fees which could be demanded as part of the Blackburn-Bliss claim. The Fifth Circuit held:

By filing a proof of claim in the bankruptcy proceeding, Blackburn-Bliss impliedly consented to the jurisdiction of the bankruptcy court, at least as to a determination of the validity and amount of the claim asserted. See In re Skyline Lumber Company, 311 F.Supp. 112, 117 (W.D. Va. 1970). Since Blackburn-Bliss was asserting a claim for the attorneys' fees stipulated in its note, it necessarily called for a determination by the bankruptcy court as to the appropriate amount of attorneys' fees to be allowed pursuant to 11 U.S.C. Section 506(b). See In re Dooley, 41 B.R. 31 (Bankr. N.D. Ga. 1984). See also, In re Bryant, 626 F.2d 492 (5th Cir. 1980).

More importantly, however, it is clear that the bankruptcy court had jurisdiction over this action because it constitutes a core proceeding arising under Title 11.

*Id.* at 1054.

The United States Supreme Court, in Pepper v. Litton, 308 U.S. 295, 60 S.Ct. 238, 84 L.Ed. 281 (1939) was presented the question of the power of the bankruptcy court to disallow either as a secured or as a general or unsecured claim a judgment obtained by the dominant and controlling stockholder of the bankrupt corporation on allegedly selling

claims. This case involved the allowance of a bankruptcy claim. Justice Douglas in delivering the opinion, stated:

Among the granted powers are the allowance and disallowance of claims; the collection and distribution of the estates of bankrupts and the determination of the controversies in relation thereto; the rejection in whole or in part "according to the equities of the case" of claims previously allowed' and the entering of such judgments "as may be necessary for the enforcement of the provisions" of the Act. In such respects the jurisdiction of the bankruptcy court is exclusive of all other courts (emphasis added). United States Fidelity & Guaranty Co v. Bray, 225 U.S. 205, 217.

Id. at 303.

Bankruptcy jurisdiction under the Bankruptcy Amendments and Federal Judgeship Act of 1984 is to be construed as broadly as possible within the constitutional constraints of Marathon. See In re Ben Cooper, Inc., 896 F.2d 1394 (2nd Cir. 1990) in which the Second Circuit Court of Appeals stated:

The statements of several influential legislators, however, indicate that bankruptcy jurisdiction was to be construed as broadly as possible within the constitutional constraints of Marathon. We agree with the First Circuit's analysis of the legislative history. As that court stated,

"The legislative history of (Section 157) indicates that Congress intended that 'core proceedings' would be interpreted broadly, close to or congruent with constitutional limits. The sponsors repeatedly said that 95 percent of the proceedings brought before bankruptcy judges would be core proceedings. See 130 Cong. Rec. E1108-1110 (Daily ed. March 20, 1984) (statement of Representative Kastenmeier); Id. at H1848, H1850 (daily ed. March 21, 1984) (statement of Representative Kindness). They used arguments strongly suggesting that they were pressing the notion to its constitutional bounds. They referred to the suits in the non-core category as 'Marathon-type' cases, see e.g., id., at E1108, E1109 (daily ed. March 20, 1984) (prepared statement of Representative Kastenmeier); id. at H1848 (daily ed. March 21, 1984) (statement of Representative Kindness), which they understood to be proceedings of 'a very limited kind,' id. at H1848 (daily ed. March 21, 1984) (statement of Representative Kindness)."

In re Arnold Print Works, Inc., 815 F.2d 165, 168 (1st Cir. 1987) (Breyer, J.).

Id. at 1398.

A bankruptcy court has jurisdiction of disputes at the outset of the case. In re Gardner, 913 F.2d 1515, 1518 (10th Cir. 1990); and Matter of Xonics, Inc., 813 F.2d 127, 131 (7th Cir. 1987). At the outset of the filing the bankruptcy instantly alters the rights

of the parties. Delgado Oil Co., Inc. v. Torres, 785 F.2d 857, 860 (10th Cir. 1986).

The rights of the parties, the Jobs and Calder, are measured as of the commencement of the Calder Chapter 13 on February 23, 1984. At this point in time, Job had a right for payment as the Code defines such a claim and that claim was unliquidated and disputed by Calder. The filing of the Chapter 13 by Calder transmuted the rights of the Jobs. The Job right to payment, although disputed by Calder, as of February 23, 1984, could not have any existence outside of bankruptcy. This is so obvious that it hardly needs belaboring.. Such a controversy between Calder and the Jobs is clearly at the core of the Federal bankruptcy function of restructuring debtor-creditor rights which implicate the unique powers of the Bankruptcy Court.

The Job pre-petition claim involves the proper administration of the Calder Chapter 13 inasmuch as the Calder case could not be closed under 11 U.S.C. Section 350 until the Job pre-petition claim had been fully

adjudicated. The outcome of the Job pre-petition claim litigation would clearly impinge on the amount of estate property that would be distributed to Calder's other creditors. The outcome also would affect property of the estate inasmuch if the State court has jurisdiction, then the judicial lien created by the State court judgment will of necessity reduce the amount of property of the estate of Calder to be disbursed to other creditors.

Original jurisdiction over the Job claim will obviously encourage efficient and expeditious resolution of all matters connected to the bankruptcy estate. There exists an undeniable relationship between the outcome of the disputed pre-petition Job claim and the administration of the bankruptcy estate.

The power of the states to create creditor rights is subordinate to the power of Congress conferred by the Supremacy Clause of the United States Constitution and Article I, Section 8, Clause 4 of the Constitution which

establishes uniform bankruptcy laws.

Title 11 and Title 28 of the United States Code, decisions of the Supreme Court of the United States and Circuit Court decisions indicate the Job disputed pre-petition claim is a core proceeding in the Calder Chapter 13 case because it is a civil proceeding that arises in the Calder Chapter 13 case at the time of the commencement of the case pursuant to 11 U.S.C. Section 1334(b).

VI. THE JOB CLAIM AS OF FEBRUARY 23, 1984, WAS A CIVIL PROCEEDING PURSUANT TO 11 U.S.C. SECTION 1334(b) RELATED TO THE CALDER CHAPTER 13 CASE.

The dominant Circuit Court case interpreting the limits to Federal bankruptcy jurisdiction in proceedings related to bankruptcy under 11 U.S.C. Section 1334(b) is Pacor, Inc. v. Higgins, 743 F.2d 984 (3rd Cir. 1984).

The facts are quite simple. John and Louise Higgins initially brought a products liability suit against Pacor in the Pennsylvania Court of Common Pleas. They sought damages allegedly caused by Mr. Higgins work-related exposure to asbestos supplied by

Pacor, the distributor of chemical supplies.

In response, Pacor filed a third party complaint impleading the Johns-Manville Corporation, which Pacor claims was the original manufacturer of the asbestos.

On August 26, 1982, Johns-Manville filed a Chapter 11 petition in bankruptcy in the United States Bankruptcy Court for the Southern District of New York. The Third Circuit Court of Appeals held:

In enacting section 1471(b), Congress intended to grant comprehensive jurisdiction to the bankruptcy courts so that they might deal efficiently and expeditiously with all matters connected with the bankruptcy estate. See H. Rep. No. 598, 95th Cong., 2d sess., 43-48, reprinted in 1978 U.S. Code Cong. & Admin. News, 5963, 6004-08. See also Young v. Sultan, Ltd., (In re Lucasa International, Ltd.), 6 B.R. 717, 719 (Bankr. S.D. N.Y. 1980) (Section 1471(b) jurisdiction is "pervasive"); Westinghouse Credit Corp. v. Yeary (In re Brothers Coal Co.), 6 B.R. 567, 570-71 (Bankr. W.D. Va. 1980) (Section 1471(b) jurisdiction is "broad.") The jurisdiction of the bankruptcy courts to hear cases related to bankruptcy is not without limit, however, and there is a statutory and eventually constitutional limitation to the power of a bankruptcy court. For subject matter jurisdiction to exist, therefore, there must be some nexus between the "related" civil proceeding and the title 11 case. See In re Hall, 30 B.R. 799, 802 (M.D. Tenn.

1983); 1 Collier on Bankruptcy, Paragraph 3.01 at 3-48 to 3-49 (15th ed. 1982). We find that nexus to be absent here.

As a threshold matter, it should be noted that the Higgins-Pacor suit is one between two parties, neither of which has filed in bankruptcy, in contrast to the Pacor-Mancille third party claim, where the defendant Manville is engaged in bankruptcy proceedings and which is therefore clearly "related to" bankruptcy. It must therefore be determined whether the primary action between Higgins and Pacor, although not one directly involving the debtor Manville, is still sufficiently connected with the Manville bankruptcy estate, such that jurisdiction lies under 28 U.S.C. Section 1471(b).

The usual articulation of the test for determining whether a civil proceeding is related to bankruptcy is whether the outcome of that proceeding could conceivably have any effect on the estate being administered in bankruptcy. E.g. In re Hall, 30 B.R. at 802; In re General Oil Distributors, Inc., 21 B.R. 888, 892 n. 13 (Bankr. E.D. N.Y. 1982); In re U.S. Air Duct Corp., 8 B.R. 848, 851 (Bankr. N.D. N.Y. 1982); 1 Collier on Bankruptcy, Paragraph 3.01 at 3-49. Thus, the proceeding need not necessarily be against the debtor or against the debtor's property. An action is related to bankruptcy if the outcome could alter the debtor's rights, liabilities, options, or freedom of action (either positively or negatively) and which in any way impacts upon the handling and administration of the bankruptcy estate.

Id. at 994.

The Tenth Circuit Court of Appeals has

adopted the Pacor formulation in In re Gardner, 913 F.2d 1515 (10th Cir. 1990):

Bankruptcy courts also have jurisdiction over related proceedings, under the authority of 28 U.S.C. Section 1471(b), which confers jurisdiction on district courts for cases related to title 11 proceedings. In re Fietz, 852 F.2d 455, 456 (9th Cir. 1988); see also 28 U.S.C. Section 157. Related proceedings are civil proceedings that, in the absence of a bankruptcy petition, could have been brought in a district court or state court. In re Colorado Energy Supply, Inc., 728 F.2d 1283, 1286 (10th Cir. 1984). "(T)he test for determining whether a civil proceeding is related in bankruptcy is whether the outcome of that proceeding could conceivably have any effect on the estate being administered in bankruptcy." Pacor, Inc. v. Higgins, 743 F.2d 984, 994 (3rd Cir. 1984). Although the proceeding need not be against the debtor or his property, the proceeding is related to the bankruptcy if the outcome could alter the debtor's rights, liabilities, options, or freedom of action in any way, thereby impacting on the handling and administration of the bankruptcy estate. Id.; see also In re Wood, 825 F.2d at 93 (related matters conceivably have effect on administration of bankruptcy estate); In re Dogpatch U.S.A., Inc., 810 F.2d 782, 786 (8th Cir. 1987) (same); In re Bobroff, 766 F.2d 797, 802 (3rd Cir. 1985) (same).

Id. at 1518.

In the case of Robinson v. Michigan Consol. Gas Co., Inc., 918 F.2d 579 (6th Cir. 1990), Chapter 7 debtors brought suit against

the bankruptcy trustee and against a utility which provided services to an apartment building for alleged wrongful discontinuation of services to their individual apartments. As to the issue of whether this action was a related procedure to the bankruptcy the Sixth Circuit Court of Appeals held:

The circuit courts have uniformly adopted an expansive definition of a related proceeding under section 1334(b) and its substantially identical predecessor under the Bankruptcy Reform Act of 1978, 28 U.S.C. Section 1471(b). As the Third Circuit explained in In re Pacor, Inc., 743 F.2d 984 (3rd Cir. 1984): (Pacor quote omitted).

.....

The Pacor formulation has been adopted by the Fourth Circuit, see In re A.H. Robins Co., 788 F.2d 994, 1002, n. 11, (4th Cir. 1985) (dicta), cert. denied, 479 U.S. 876, 107 S.Ct. 251, 93 L.Ed. 2d 177 (1986); The Fifth Circuit, see In re Wood, 825 F.2d at 93; the Eighth Circuit, see In re Dogpatch, U.S.A., Inc., 810 F.2d 782, 786 (8th Cir. 1987); and the Ninth Circuit, see In re Fietz, 852 F.2d 455, 457 (9th Cir. 1988). We too have accepted the Pacor articulation, albeit with the caveat that "situations may arise where an extremely tenuous connection to the estate would not satisfy the jurisdictional requirement." In re Salem Mortgage Co., 783 F.2d 626, 634 (6th Cir. 1986); accord In re Turner, 724 F.2d 338, 341 (2nd Cir. 1983).

Because the plaintiffs appear to have sued the Trustee of the Woodward estate in his official capacity, and therefore to seek recovery from the estate itself, see Ford Motor Credit Co. v. Weaver, 680 F.2d 451, 461 (6th Cir. 1982), the outcome of the litigation could conceivably affect the size of the Woodward estate. Accordingly, we agree with the defendants that this action is "related to" a bankruptcy proceeding. Because the district court would have had original jurisdiction over this action as a related proceeding pursuant to 28 U.S.C. Section 1334(b), it had removal jurisdiction under 28 U.S.C. Section 1452.

Id. at 583.

The Ninth Circuit Court of Appeals in In re Fietz, 852 F.2d 455 (9th Cir. 1988) considered the issue of whether a Chapter 13 debtor's former wife's cross claim against a mortgagee was a matter sufficiently related to the Chapter 13 of the husband so that federal jurisdiction existed over the wife's cross claim. The Ninth Circuit Court of Appeals formulated its test for "related to" as follows:

Various circuits have developed slightly different definitions of what constitutes a "related" case under section 1471(b) and its identical successor, section 1334(b). The Third Circuit articulated what has become the dominant formulation: Id. at 457

.....

The Fourth, Fifth and Eighth Circuits have adopted the Pacor definition without modification. See Wood v. Wood (In re Wood), 825 F.2d 90, 93 (5th Cir. 1987); Dogpatch Properties, Inc. v. Dogpatch U.S.A., Inc. (In re Dogpatch), 810 F.2d 782, 786 (8th Cir. 1987); A.H. Robins Co., Inc., 788 F.2d 994, 1002 n. 11 (4th Cir.) (dicta), cert. denied, 479 U.S. 876, 107 S.Ct. 251, 93 L.Ed.2d 177 (1986).

The Second, Sixth and Seventh Circuits have adopted definitions similar to the one announced in Pacor, but their formulations may deny jurisdiction in cases where the dispute is "conceivably" related to the bankruptcy estate, but that relationship is remote. See Turner v. Ermiger (In re Turner), 724 F.2d 338, 341 (2nd Cir. 1983); Kelley v. Nodine (In re Salem Mortgage Co.,), 783 F.2d 626, 634 (6th Cir. 1986); Elscint, Inc. v. First Wisconsin Fin. Corp. (In re Xonics, Inc.), 813 F.2d 127 (7th Cir. 1987).

We conclude that the Pacor definition best represents Congress's intent to reduce substantially the time-consuming and expensive litigation regarding a bankruptcy court's jurisdiction over a particular proceeding. See H. Rep. No. 595, 95th Cong., 2d Sess., 43-48, reprinted in 1978 U.S. Code Cong. & Admin. News, 5787, 5963, 6004-08. The Pacor definition promotes another congressionally-endorsed objective: the efficient and expeditious resolution of all matters connected to the bankruptcy estate. See id. We therefore adopt the Pacor definition quoted above. We reject any limitation on this definition; to the extent that other circuits may limit jurisdiction where the Pacor

decision would not, we stand by Pacor. Applying the Pacor definition to the facts at hand, we consider whether the outcome of Gordon's cross-claim conceivably could have affected the administration of Fietz' bankruptcy estate when Gordon filed her cross-claim on July 14, 1983.

*Id.* at 457.

The Sixth Circuit in In re Salem Mortgage Co., 783 F.2d 626 (6th Cir. 1986) considered the test for "related to" in a case involving a bankruptcy order approving class certification and settlement of a class action suit.

The Sixth Circuit stated:

The emphatic terms in which the jurisdictional grant is described in the legislative history, and the extraordinarily broad wording of the grant itself, leave us with no doubt that Congress intended to grant to the district courts broad jurisdiction in bankruptcy cases.

*Id.* at 633.

.....

Congress wisely chose a broad jurisdictional grant and a broad abstention doctrine over a narrower jurisdictional grant so that the district court could determine in each individual case whether hearing it would promote or impair efficient and fair adjudication of bankruptcy cases. (Emphasis added.) See Note, Selective Exercise of Jurisdiction in Bankruptcy Related Civil

Proceedings, 59 Tex.L.Rev. 325, 334-36, (1981).

Id. at 635.

For further support in accord with Calder's position that the Job pre-petition claim was a proceeding related to the Calder Chapter 13 case, see the following Circuit Court cases: Diamond Mortgage Corp. of Illinois v. Sugar, 913 F.2d 1233 (7th Cir. 1990); In re Hudson Shipbuilders, Inc., 794 F.2d 1051 (5th Cir. 1986); Kaonohi Ohana, Ltd. v. Sutherland, 873 F.2d 1302 (9th Cir. 1989); Home Ins. Co. v. Cooper & Cooper, Ltd., 889 F.2d 746 (7th Cir. 1989); Matter of Majestic Energy Corp., 835 F.2d 87 (5th Cir. 1988); National City Bank v. Coopers and Lybrand, 802 F.2d 990 (8th Cir. 1986); Nationwide Mutual Fire Ins. Co. v. Eason, 736 F.2d 130 (4th Cir. 1984); Matter of Xonics, Inc., 813 F.2d 127 (7th Cir. 1987); and In re Bobroff, 766 F.2d 797 (3rd Cir. 1985).

Applying the Pacor test to the facts of the Calder Chapter 13 case, what is the actual effect and/or conceivable effect of

the Job litigation and/or claim on the Calder 1984 Chapter 13? It has the profound effect of substantially increasing the Job claim against the Calder estate and simultaneously diluting the claims of other unsecured claim-holders. Upon the outcome of this claim liquidation depends the distribution to other creditors. It has a direct necessarily substantial impact upon the distribution of the property of the estate inasmuch as claims against the estate can only be satisfied out of property of the estate. It clearly is at the center of the federal bankruptcy function of restructuring debtor-creditor rights in the Calder Chapter 13 which implicates the unique power of the bankruptcy court.

The Job pre-petition claim has a potential impact on the property of the estate inasmuch if the state court is allowed jurisdiction over the claim which results in a judgment against Calder, then there would pursuant to U.C.A. 78-22-1 be a judicial lien imposed on all the real property of Calder in Salt Lake County. The Jobs with

a judgment would also conceivably be able to execute on property of the Calder estate, including earnings, which would impact upon administration of the estate. This would make reorganization by the debtor difficult. The Calder Chapter 13 case clearly could not be closed under 11 U.S.C. Section 350 and a discharge granted under Section 1328 until the Job pre-petition claim had been handled. It would clearly, directly and necessarily impact upon the administration of the Calder estate.

There exists an undeniable relationship between the outcome of the Job pre-petition claim or cause of action and the administration of the bankruptcy estate. The Title 11 Code provisions that would or could conceivably involve the Job pre-petition claim are as follows: Section 350, closing estates; Section 501, filing proof of claims; Section 502, allowance of claims; Section 541, property of the estate; Section 1306, property of the estate; Section 1321, filing of plan; Section 1321, modification of plan before

confirmation; Section 1322, contents of plan; Section 1324, confirmation hearing; Section 1325, confirmation of plan; Section 1326, payments; Section 1327, effect of confirmation; Section 1329, modification of plan after confirmation; and Section 1328, discharge. The act of the Jobs in filing a proof of claim in Calder's 1984 Chapter 13 indicates the Jobs themselves and their counsel considered the Job pre-petition claim was inherently related to the Calder 1984 Chapter 13 case.

That the Job pre-petition claim as of February 23, 1984, was a civil proceeding related to the Calder Chapter 13 under the Pacor test formulation is so obvious that it hardly needs to be belabored.

VII. AS OF THE COMMENCEMENT OF THE CALDER CHAPTER 13 CASE ON FEBRUARY 23, 1984, THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH HAD EXCLUSIVE JURISDICTION OVER ALL OF THE PROPERTY OF CALDER, WHEREVER LOCATED.

Congress intended a broad range of property to be included in the estate. United States v. Whiting Pools, Inc., 462 U.S. 198,

103 S.Ct. 2309, 76 L.Ed. 515 (1982):

The statutory language reflects this view of the scope of the estate. As noted above, Section 541(a)(1) provides that the "estate is comprised of all the following property wherever located: ...all legal or equitable interests of the debtor in property as of the commencement of the case." 11 U.S.C. Section 541(a)(1) (1976 ed., Supp. V). The House and Senate Reports on the Bankruptcy Code indicate that Section 541(a)(1)'s scope is broad.\*

Id. at 204.

The Tenth Circuit Court of Appeals in Delgado Oil Co., Inc. v. Torres, 785 F.2d 857 (10th Cir. 1986) held that a debtor filing a Chapter 11 petition deprived the United States District Court of Wyoming of subject matter jurisdiction. The facts are as follows:

In July 1982, the Delgado Oil Company commenced an action which was removed to the

---

\*"The scope of this paragraph (Section 541(a)(1)) is broad. It includes all kinds of property, including tangible or intangible property, causes of action (see Bankruptcy Act Section 70a(6)), and all other forms of property currently specified in Section 70a of the Bankruptcy Act." Id. at 367; S. Rep. No. 95-989, p. 82 (1978), U.S. Code Cong. & Admin. News, 1978, pp. 5868, 6323.

United States District Court for the District of Wyoming. The action claimed that the defendant, Cleveland, as a director of an insolvent corporation, Balducci Oil Company, made a false representation about the company's financial statements on which Delgado relied in extending credit to Balducci. Delgado also claimed Cleveland willfully mismanaged the assets of the company resulting in the preferential payment of certain Balducci creditors whose debts were guaranteed by Cleveland. Delgado alleged these actions were taken to protect and promote Cleveland's personal interests to the detriment of the corporation and in breach of his fiduciary obligation to Delgado. After a bench trial, the District Court concluded Cleveland was not liable for fraud but applying Colorado common law found Cleveland in his capacity as a director of an insolvent corporation, liable for unlawful preferential payments in breach of his fiduciary duty. In March 1982, prior to the trial, Balducci had

filed a petition for reorganization under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Colorado. Delgado filed a claim as an unsecured creditors in the bankruptcy court and was a member of the creditors committee. More importantly, no party apparently considered the possible effect of bankruptcy nor presented the question of whether the trial court retained jurisdiction over the issue of a preferential transfer. This is similar to the Calder case inasmuch as no one considered whether the Utah District Court retained jurisdiction over the property of Calder's Chapter 13 estate.

Judge Moore of the Tenth Circuit Court of Appeals delivered the opinion as to the jurisdictional issue, holding:

Nevertheless, once addressed, this critical question is dispositive. Subject matter jurisdiction is never presumed. In every case and at each stage of the proceeding, we must satisfy ourselves that our jurisdiction is proper.

Treinies v. Sunshine Mining Co., 308 U.S. 66, 60 S.Ct. 44, 84 L.Ed. 85 (1939). Moreover, although the parties never challenged jurisdiction, we must sua sponte raise the issue to assure our

proper jurisdiction. Tafoya v. U.S.  
Dept. of Justice, LEAA, 748 F.2d 1389  
(10th Cir. 1984).

The question presented is whether, under the Bankruptcy Reform Act of 1978 (The Code), the filing of a bankruptcy petition by a corporation deprives the district court of jurisdiction to try the issue of a preferential transfer (emphasis added) by a corporate director and vests the bankruptcy court with exclusive jurisdiction. After viewing the appropriate statutory provisions, we conclude the question must be answered in the affirmative.

We start our analysis with the provisions of 28 U.S.C. Section 1471(a), (e) (1978), which states:

(a) Except as provided in subsection (b) of this section, the district courts shall have original and exclusive jurisdiction of all cases under title 11.

.....

(e) The bankruptcy court in which a case under title 11 is commenced shall have exclusive jurisdiction of all of the property, wherever located, of the debtor, as of the commencement of such case.

Subsection (e) creates exclusive jurisdiction in the bankruptcy court of "all property of the debtor" (emphasis in citation).

Id. at 859.

.....

Thus, the filing of the bankruptcy petition by Balducci transmuted the legal rights of its creditors seeking recovery of corporate debts.

Id. at 861.

.....

The overriding nature of the bankruptcy action to recover a preference cannot be circumvented. When a debtor corporation has made a transfer of its assets which results in the preference of one or more creditors over others, the purpose of an action against those transferees is to return assets to the debtor's estate for equitable distribution to all creditors. While the common law action to recover a preferential transfer can be maintained by creditors under certain circumstances, the intervention of the events of bankruptcy and the pervasive jurisdiction of the bankruptcy court must negate the common law right of recovery. The negation occurs to satisfy the basic bankruptcy purpose of treating all similarly situated creditors alike. To do this, the trustee in bankruptcy is given power to recover, as property of the debtor, preferentially transferred property of the value of that property.

Id. at 861.

Equality of treatment of creditors and exclusive jurisdiction over all estate property as of the date of filing in the Calder case as in Delgado, supra, mandate that the filing by Calder of a Chapter 13 on February 23, 1984, in the United States Bankruptcy Court

for the District of Utah, as was true in a similar case in Delgado, supra, for the United States Bankruptcy Court for the District of Colorado, deprives the non-bankruptcy state court of jurisdiction over the property of the estate of Calder in his Chapter 13.

In State of Missouri v. U.S. Bankruptcy Court, Etc., 647 F.2d 768 (8th Cir. 1981), the State of Missouri sought a writ of prohibition to prevent a bankruptcy court in the Eastern District of Arkansas from exercising jurisdiction over grain stored by the debtors. The United States District Court for the Eastern District of Arkansas denied the writ ruling that the bankruptcy court possessed exclusive jurisdiction over the estate of the debtors, which included all legal and equitable interests in property of the debtors wherever located as of the commencement of the case. The Eighth Circuit affirmed and held that:

To determine whether the bankruptcy court has jurisdiction over the Missouri grain, therefore, we must decide if the debtors' interest in the Missouri grain falls

within section 541's broad definition of property.

Id. at 774.

.....

On the record before us, the debtors' interest in the Missouri grain consists of possession and a minute ownership interest. In light of the broad definition of property under section 541 of the Code, these interests in the grain are sufficient to trigger preliminary jurisdiction over the property in the bankruptcy court. 4 Collier on Bankruptcy, Paragraph 541.08 (2) (15th ed. 1979); see In re Farmers Grain Exchange, Inc., 1 Bankr. Ct. Dec. 1621 (W.D. Wis. 1975).

Id. at 774.

The case of Kalb v. Feuerstein, 308 U.S. 433, 60 S.Ct. 343, 84 L.Ed. 370 (1940) involved the question of whether the Frazier-Lemke Act from the moment a petition was filed and so long as it remained pending operated, in the absence of the bankruptcy court's consent, to oust the jurisdiction of a Wisconsin County Court so as to stay its power to proceed with foreclosure of a mortgage on debtors' farm. The facts are as follows:

Ernest Kalb and Margaret Kalb were

Wisconsin farmers who owned a farm. The mortgage holders on this Wisconsin farm were Henry Feuerstein and Helen Feuerstein, his wife. The Feuersteins on March 7, 1983, began foreclosure on the Kalb's farm in the Walworth (Wisconsin) County Court. A judgment of foreclosure was entered on April 21, 1983. On July 20, 1935, the sheriff sold the property under the judgment while Ernest Kalb had pending in the bankruptcy court a petition for composition and extension of time to pay his debts under Section 75 of the Bankruptcy Act (Frazier-Lemke Act). The Walworth County Court granted the Feuerstein motion for confirmation of the sale. No stay of the foreclosure or of the subsequent action to enforce it was ever sought or granted in the state or bankruptcy courts. On December 16, 1935, the Feuersteins obtained a writ of assistance from the state court and on March 12, 1936, the sheriff executed the writ by ejecting the Kalbs and their family from the mortgaged farm.

The question was whether the Wisconsin County Court had jurisdiction while the petition under the Frazier-Lemke Act was pending in the bankruptcy court to confirm the sheriff's sale and order the Kalbs dispossessed of their farm and if the court lacked jurisdiction whether its action in the absence of direct appeal is subject to collateral attack.

After ejection from their farm, the Kalbs brought an action in equity in the Circuit Court of Walworth County, Wisconsin, against the Feuersteins, who had purchased at the sheriff's sale, for the removal of the mortgagees from the farm. Demurrer was sustained for failure to state a cause of action and the complaint was dismissed. The Supreme Court of Wisconsin affirmed.

Addressing itself solely to this federal question of construing the Frazier-Lemke Act, the Wisconsin Court decided that the federal act did not itself as an automatic stay terminate the state court's jurisdiction when the

farmer filed his petition in the bankruptcy court. Since there had been no judicial stay, it held that the confirmation of sale and writ of assistance were not in violation of the Act.

On appeal to the United States Supreme Court, Justice Black delivered the opinion of the Supreme Court of the United States, which held:

But if appellants are right in their contention that the Federal Act of itself, from the moment the petition was filed and so long as it remained pending operated, in the absence of the bankruptcy court's consent, to oust the jurisdiction of the State court so as to stay its power to proceed with foreclosure, to confirm a sale, and to issue an order ejecting appellants from their farm, the action of the Walworth County Court was not merely erroneous but was beyond its power, void, and subject to collateral attack. And the determination whether the Act did so operate is a construction of that Act and a federal question.

It is generally true that a judgment by a court of competent jurisdiction bears a presumption of regularity and is not thereafter subject to collateral attack. But Congress, because its power over the subject of bankruptcy is plenary, may by specific bankruptcy legislation create an exception to that principle and render judicial acts taken with respect to the person or property of a

debtor whom the bankruptcy law protects nullities and vulnerable collateral (citations omitted). Although the Walworth County Court had general jurisdiction over foreclosures under the law of Wisconsin, a preemptory prohibition by Congress in the exercise of its supreme power over bankruptcy that no State court have jurisdiction over a petitioning farmer-debtor or his property, would have rendered the confirmation of sale and its enforcement beyond the County Court's power and nullities subject to collateral attack (citations omitted). The states cannot, in the exercise of control over local laws and practice, vest state courts with power to violate the supreme law of the land (citations omitted). The Constitution grants Congress exclusive power to regulate bankruptcy and under this power Congress can limit the jurisdiction which courts, state or federal, can exercise over the person and property of a debtor who duly invokes the bankruptcy law. If Congress has vested in the bankruptcy courts exclusive jurisdiction over farmer-debtors and their property, and has by its Act withdrawn from all other courts all power under any circumstances to maintain and enforce foreclosure proceedings against them, its Act is the supreme law of the land which all courts--state and federal--must observe. The wisdom and desirability of an automatic statutory ouster of jurisdiction of all except bankruptcy courts over farmer-debtors and their property were considerations for Congress alone.

Id. at 438.

.....

In harmony with the general plan of  
giving the farmer an opportunity for

rehabilitation, he was relieved--after filing a petition for composition and extension--of the necessity of litigation elsewhere and its consequent expense (emphasis added). This was accomplished by granting the bankruptcy court exclusive jurisdiction of the petitioning farmer and all his property with complete and self-executing statutory exclusion of all other courts (emphasis added).

The mortgagees who sought to enforce the mortgage after the petition was duly filed in the bankruptcy court, the Wal-  
worth County Court that attempted to grant the mortgagees relief, and the sheriff who enforced the court's judgment, were all acting in violation of the controlling Act of Congress (emphasis added). Because that State court had been deprived of all jurisdiction or power to proceed with the foreclosure, the confirmation of the sale, the execution of the sheriff's deed, the writ of assistance, and the ejection of appellants from their property--to the extent based upon the court's actions--were all without authority of law.

*Id.* at 443.

For additional case support that the United States District Court in which a case is commenced shall have exclusive jurisdiction of all of the property, wherever located, of the debtor as of the commencement of the case, see Galloway v. Benton, 336 U.S. 132, 69 S.Ct. 435, 93 L.Ed. 553 (1949); Pepper v. Litton, 308 U.S. 295, 304, 60 S.Ct. 238, 244,

84 L.Ed. 281 (1939); In re Watts and Sachs, 190 U.S. 1 (1902); In re Titan Energy, Inc., 837 F.2d 325 (8th Cir. 1988); Begley v. Philadelphia Elec. Co., 760 F.2d 46 (3rd Cir. 1985); In re Modern Boats, 775 F.2d 619 (5th Cir. 1985); Wilson v. Bill Barry Enterprises, Inc., 822 F.2d 859 (9th Cir. 1987); In re Hudson Shipbuilders, Inc., 794 F.2d 1051 (5th Cir. 1986); In re Ben Cooper, 896 F.2d 1394 (2nd Cir. 1990); State of Texas v. Wellington Resources Corp., 706 F.2d 533 (5th Cir. 1983); In re Gardner, 913 F.2d 1515 (10th Cir. 1990); In re Brown, 734 F.2d 119 (2nd Cir. 1984); and Commodity Futures Trading Com'n v. Petro Mkts., 700 F.2d 1279 (9th Cir. 1983).-

In the Calder 1984 Chapter 13, there never was any motion filed for a lift of the automatic stay pursuant to 11 U.S.C. Section 362 or a motion filed for the Federal court to abstain pursuant to 28 U.S.C. Section 1334(c)(1) or Section 1334(c)(2).

At the time of the Calder-Job trial in January 1986 before the State Court and at

the time the judgment was entered on February 24, 1986, the United States District Court had exclusive jurisdiction of all of the property of Calder from the commencement of the Chapter 13 on February 23, 1984, until its dismissal in August 1986, and therefore the State Court lacked subject matter jurisdiction which proposition is amply supported by statutory and case authority.

#### CONCLUSION

The Utah District Court clearly did not have jurisdiction to try or enter a judgment in the Job case because of any and all of the three following reasons: (1) The Job Claim as of February 23, 1984, pursuant to 28 U.S.C. Section 1334(b), was a civil proceeding arising in the Calder 1984 Chapter 13 and was therefore a core matter under 28 U.S.C. Section 157(b)(2)(B); (2) The Job Claim as of February 23, 1984, pursuant to 28 U.S.C. Section 1334(b) was a civil proceeding related to the Calder Chapter 13; and (3) As of the commencement of the Calder Chapter 13 case on February 23, 1984, the United States

District Court for the District of Utah had exclusive jurisdiction of all of the property of Calder, wherever located.

RESPECTFULLY SUBMITTED this 23d day of September, 1991.

Richard Calder  
RICHARD CALDER, Pro Se



## APPENDIX A

Denial by the Supreme Court, State of Utah,  
of Petitioner's Motion to Reverse because  
of Manifest Error

IN THE SUPREME COURT

STATE OF UTAH

332 STATE CAPITOL

SALT LAKE CITY, UTAH 84114

June 13, 1991

OFFICE OF THE CLERK

---

Richard Calder  
3366 South 2940 East  
Salt Lake City, Utah 84109

Dennis R. Job and, No. 910137  
Reta Job, 840905436CV  
Plaintiffs and Appellees,  
v.  
Richard Calder,  
Defendant and Appellant.

Appellant's motion to reverse for manifest error is this day denied. Appellees' motion to affirm is granted on the basis that the grounds for review are so insubstantial as not to merit further proceedings and consideration by this court. Utah R. App. P. 10(a)(2).

Geoffrey J. Butler  
Clerk

APPENDIX B

Order of Judge Frederick which was appealed

Douglas J. Payne, A4113  
FABIAN & CLENDENIN,  
a Professional Corporation  
Attorneys for Reta Job  
Twelfth Floor  
215 South State Street  
P.O. Box 510210  
Salt Lake City, Utah 84151  
Telephone: (801) 531-8900

IN THE THIRD JUDICIAL DISTRICT COURT

IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

DENNIS R. JOB,	)	
	)	
Plaintiff,	)	Civil No. 840905436CV
	)	Judge J. Dennis
v.	)	Frederick
	)	
RICHARD CALDER,	)	ORDER DENYING MOTION
	)	TO DECLARE JUDGMENT
Defendant.	)	VOID
	)	

---

Defendant Richard Calder ("Calder") filed a Motion Asking that The Judgment Entered on February 24, 1986 be Declared Void Because the District Court Lacked Jurisdiction Or In the Alternative, Defendant's Motion Asking the Court to Enter an Order on Plaintiffs' Motion for Amendment of, Or in the Alternative, Relief from Judgment. Plaintiff Reta Job filed a memorandum opposing the portion of Calder's motion seeking to have the February 24, 1986 judgment declared void. Neither party requested oral argument on the motion

and Calder filed a Request to Submit for Decision. Based upon the pleadings, memoranda, and good cause appearing,

IT IS HEREBY ORDERED that defendant Richard Calder's Motion Asking That the Judgment Entered on February 24, 1986 Be Declared Void Because the District Court Lacked Jurisdiction is hereby denied on the basis that 28 U.S.C. Section 1334(a) did not divest this Court of subject matter jurisdiction over this case inasmuch as 28 U.S.C. Section 1334(b) provides for concurrent jurisdiction over civil proceedings relating to bankruptcy cases.

DATED this 4th day of March, 1991.

BY THE COURT:

S/S  
J. Dennis Frederick  
District Court Judge

APPROVED AS TO FORM:

S/S

Richard Calder  
Defendant Pro Se

CERTIFICATE OF MAILING

I hereby certify that I mailed an unconfirmed copy of the foregoing Order Denying Motion to Declare Judgment Void this 27th day of February, 1991, postage prepaid, to the following:

Richard Calder  
3366 South 2940 East  
Salt Lake City, Utah 84109

S/S  
SuzAnn G. Miller

DJP:022091A

APPENDIX C

Judgment of the District Court of the Third  
Judicial District in and for Salt Lake  
County, State of Utah, in Civil No. C-84-5436  
rendered on February 24, 1986

PETER H. WALDO, ESQ., #3883  
Attorney for Plaintiffs  
275 East 200 South, Suite 150  
Salt Lake City, Utah 84111  
Telephone: (801) 364-1142

---

IN THE DISTRICT COURT  
OF THE THIRD JUDICIAL DISTRICT  
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

---

DENNIS R. JOB and )  
RETA JOB, ) JUDGMENT  
)  
Plaintiffs, )  
)  
v. ) Civil No. C-84-5436  
)  
RICHARD CALDER, ) JUDGE FREDERICK  
)  
Defendant. )

---

This matter having come before the Court for trial on the 9th and 10th days of January, 1986, and the Court having heard the testimony of the Witnesses, reviewed the evidence, entered its Findings of Fact and Conclusions of Law, and being otherwise fully informed,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

That Judgment is granted for the Plaintiffs in the amount of \$54,564, plus interest thereon at the rate of 12% per annum from

the date of entry hereof.

DATED this 24th day of February, 1986.

BY THE COURT:

S/S  
JUDGE FREDERICK

APPENDIX D

28 U.S.C. Section 157

SECTION 157. Procedures.

(a) Each district court may provide that any or all cases under title 11 and any or all proceedings arising under title 11 or arising in or related to a case under title 11 shall be referred to the bankruptcy judges for the district.

(b) (1) Bankruptcy judges may hear and determine all cases under title 11 and all core proceedings arising under title 11, or arising in a case under title 11, referred under subsection (a) of this section, and may enter appropriate orders and judgments, subject to review under section 158 of this title.

(2) Core proceedings include, but are not limited to --

(A) matters concerning the administration of the estate;

(B) allowance or disallowance of claims against the estate or exemptions from property of the estate, and estimation of claims or interests for the purposes of confirming a plan under chapter 11, 12, or

13 of title 11 but not the liquidation or estimation of contingent or unliquidated personal injury tort or wrongful death claims against the estate for purposes of distribution in a case under title 11;

(C) counterclaims by the estate against persons filing claims against the estate;

(D) orders in respect to obtaining credit;

(E) orders to turn over property of the estate;

(F) proceedings to determine, avoid, or recover preferences;

(G) motions to terminate, annul, or modify the automatic stay;

(H) proceedings to determine, avoid, or recover fraudulent conveyances;

(I) determinations as to the dischargeability of particular debts;

(J) objections to discharges;

(K) determinations of the validity, extent, or priority of liens;

(L) confirmations of plans;

(M) orders approving the use or lease of property, including the use of cash collateral;

(N) orders approving the sale of property other than property resulting from claims brought by the estate against persons who have not filed claims against the estate; and

(O) other proceedings affecting the liquidation of the assets of the estate or the adjustment of the debtor-creditor or the equity security holder relationship, except personal injury tort or wrongful death claims.

(3) The bankruptcy judge shall determine, on the judge's own motion or on timely motion of a party, whether a proceeding is a core proceeding under this subsection or is a proceeding that is otherwise related to a case under title 11. A determination that a proceeding is not a core proceeding shall not be made solely on the basis that its resolution may be affected by State law.

(4) Non-core proceedings under section 157(b)(2)(B) of title 28, United States Code, shall not be subject to the mandatory abstention provisions of section 1334(c)(2).

(5) The district court shall order that personal injury tort and wrongful death claims shall be tried in the district court in which the bankruptcy case is pending, or in the district court in the district in which the claim arose, as determined by the district court in which the bankruptcy case is pending.

(c)(1) A bankruptcy judge may hear a proceeding that is not a core proceeding but that is otherwise related to a case under title 11. In such proceeding, the bankruptcy judge shall submit proposed findings of fact and conclusions of law to the district court, and any final order or judgment shall be entered by the district judge after considering the bankruptcy judge's proposed findings and conclusions and after reviewing de novo those matters to which any party has timely and specifically objected.

(2) Notwithstanding the provisions of paragraph (1) of this subsection, the district court, with the consent of all the parties to the proceeding, may refer a proceeding related to a case under title 11 to a bankruptcy judge to hear and determine and to enter appropriate orders and judgments, subject to review under section 158 of this title.

(d) The district court may withdraw, in whole or in part, any case or proceeding referred under this section, on its own motion or on timely motion of any party, for cause shown. The district court shall on timely motion of a party, so withdraw a proceeding if the court determines that resolution of the proceedings requires consideration of both title 11 and other laws of the United States regulating organizations or activities affecting interstate commerce.

APPENDIX E

Docket Sheet of Case No. 84A-00492 in the  
United States Bankruptcy Court, District of  
Utah

It is not possible to type a Docket Sheet, but the Docket Sheet shows the Calder Chapter 13, Case No. 84A-00492, was filed on February 23, 1984 and dismissed on August 13, 1986.

## APPENDIX F

Notice filed in State Court that A Chapter 13  
had been filed

DANIEL R. BOONE  
Attorney for Defendant  
Suite 735, Judge Building  
8 East 300 South  
Salt Lake City, Utah 84111  
Telephone: (801) 355-5225

IN THE DISTRICT COURT  
OF SALT LAKE COUNTY, STATE OF UTAH

---

DENNIS R. JOB and )  
RETA JOB, ) NOTICE OF FILING  
Plaintiffs, ) OF CHAPTER 13  
vs. ) PETITION IN THE  
RICHARD CALDER, ) UNITED STATES  
Defendant. ) BANKRUPTCY COURT  
 ) FOR THE DISTRICT  
 ) OF UTAH  
 ) Civil No. C-84-5436  
 ) JUDGE FREDERICK  
)

---

Please take notice that defendant filed a Chapter 13 Petition in the United States Bankruptcy Court for the District of Utah, Case No. 84A-00492 on February 23, 1984. The filing of the Chapter 13 Petition gives rise to a stay against further proceedings in prosecution of the collection of claims absent further Order of the United States Bankruptcy Court under the provisions of 11 U.S.C. Section 362. In the present instance the acts complained of by the

plaintiff arose prior to the filing of the Petition by the defendant and given the present posture of this proceeding 11 U.S.C. Section 362 precludes entry of judgment absent an Order of the United States Bankruptcy Court.

DATED this 5th day of February, 1986.

S/S  
DANIEL R. BOONE

MAILING CERTIFICATE

I hereby certify that I mailed a true and correct copy of the foregoing Notice of Filing of Chapter 13 Petition in the United States Bankruptcy Court for the District of Utah to Peter H. Waldo, Attorney for Plaintiffs, at Suite 150, 275 East 200 South, Salt Lake City, Utah 84111, postage fully prepaid, this 5th day of February, 1986.

S/S  
DANIEL R. BOONE

APPENDIX G

Job Proof of Claim Filed in the Calder  
Chapter 13

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF UTAH

In re: ) Bankruptcy Case No.  
Richard Calder, ) 84A-00492  
Debtor(s). ) PROOF OF CLAIM

Please print or type. Attach additional pages if needed.

1. Claimant's name and address:

Dennis R. Job  
Reta Job  
1977 Arcadia Lane  
Holladay, Utah 84117

2. The debtor was on the date the bankruptcy petition was filed, and still is, indebted to this claimant in the sum of \$54,543.90, which includes:

\$ 53,642.67 principal (if applicable)  
812.46 earned interest (if applicable)  
88.77 other (explain): Costs of  
garnishments and executions

3. The debtor owes this money because:

Judgment against debtor for attorney malpractice; emotional distress; special, general and punitive damages awarded

4. A copy of any writing upon which this claim is based is attached.

5. The only security interest (collateral) held for this claim is:

Real property debtor owns in Salt Lake  
and Utah County  
(Attach writing, if any)

6. The claim is    unsecured \$ \_\_\_\_\_  
                  X secured \* \$ \_\_\_\_\_  
                     priority\*\*\$ \_\_\_\_\_

\$54,543.90 = TOTAL AMOUNT CLAIMED

\*The claim is unsecured except to the extent that the security interest has value sufficient to satisfy it.

\*\*If priority is claimed, state basis under bankruptcy law:

S/S  
DATED: May 14, 1986 By: Peter H. Waldo  
Attorney for  
Claimant

**CLAIM NUMBER**  
(for office use only)

WARNING: Presenting a fraudulent claim in a bankruptcy case is a federal crime, bearing a penalty of a \$5,000 maximum fine and imprisonment of up to five years. 18 U.S.C. Section 152.

APPENDIX H

28 U.S.C. Section 1471

Except as provided in subsection (b) of this section the district courts shall have original and exclusive jurisdiction of all cases under title 11.

(b) Notwithstanding any Act of Congress that confers exclusive jurisdiction on a court or courts other than the district courts, the district courts shall have original but not exclusive jurisdiction of all civil proceedings arising under title 11 or arising in or related to cases under title 11.

(c) The bankruptcy court for the district in which a case under title 11 is commenced shall exercise all of the jurisdiction conferred by this section on the district courts.

(d) Subsection (b) or (c) of this section does not prevent a district court or a bankruptcy court, in the interest of justice, from abstaining from hearing a particular proceeding arising under title 11, or arising in or related to a case under title 11. Such abstention, or a decision

not to abstain, is not reviewable by appeal or otherwise.

(e) The bankruptcy court in which a case under title 11 is commenced shall have exclusive jurisdiction of all of the property, wherever located, of the debtor, as of the commencement of such case. (a)

## APPENDIX I

Motion and Memorandum that State District  
Court lacked Jurisdiction

RICHARD CALDER, Pro Se  
3366 South 2940 East  
Salt Lake City, Utah 84109  
Telephone: (801) 487-7044

IN THE DISTRICT COURT  
OF THE THIRD JUDICIAL DISTRICT  
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

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DENNIS R. JOB and )  
RETA JOB, )  
Plaintiffs, ) DEFENDANT'S MOTION  
vs. ) ASKING THAT THE  
RICHARD CALDER, ) JUDGMENT ENTERED ON  
Defendant. ) FEBRUARY 24, 1986 BE  
 ) DECLARED VOID BECAUSE  
 ) THE DISTRICT COURT  
 ) LACKED JURISDICTION  
 ) OR IN THE ALTERNATIVE  
 ) DEFENDANT'S MOTION  
 ) ASKING THE COURT TO  
 ) ENTER AN ORDER ON  
 ) PLAINTIFFS' MOTION  
 ) FOR AMENDMENT OF,  
 ) OR IN THE ALTERNATIVE  
 ) RELIEF FROM JUDGMENT  
 )  
 ) Civil No. C-84-5436  
 ) JUDGE FREDERICK  
)

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I. THE JUDGMENT ENTERED ON FEBRUARY 24, 1986  
IS VOID BECAUSE THE DISTRICT COURT LACKED  
JURISDICTION.

The District Court of the Third Judicial  
District in and for Salt Lake County, State  
of Utah, at the time the above case was tried  
on January 9 and 10, 1986, and at the time  
the judgment was entered, February 24, 1986,

and docketed, February 26, 1986, lacked jurisdiction to try the case, enter the judgment, or docket the judgment.

The Defendant, Richard Calder, had filed a petition for relief under Chapter 13 in the United States Bankruptcy Court for the District of Utah, Case No. 84A-00492, on February 23, 1984 (see Exhibit A entitled Notice of Filing of Chapter 13 Petition in the United States Bankruptcy Court for the District of Utah) and (see Exhibit B which is a certification by the Clerk of the Bankruptcy Court of the filing date and the date of dismissal in the United States Bankruptcy Court for the District of Utah) and (see Exhibit B which is a certification by the Clerk of the Bankruptcy Court of the filing date and the date of dismissal).

The State District Court in the case at bar did not have any jurisdiction over the subject matter pursuant to 28 U.S.C. Section 1334 and therefore pursuant to the ruling of the Supreme Court of the United States and the Supreme Court of the State of Utah, the

judgment in the case at bar entered on February 24, 1986, is void and the State District Court should so order.

II. DEFENDANT'S ALTERNATE MOTION ASKING THE COURT TO ENTER AN ORDER ON PLAINTIFFS' MOTION FOR AMENDMENT, OR IN THE ALTERNATIVE, RELIEF FROM JUDGMENT.

Defendant asks that the Court decide if the minute entry (see Exhibit C) refers to the motion filed on March 6, 1986, by attorney Peter H. Waldo, Esquire (see Exhibit D), or to the motion filed on June 10, 1986, by attorney John J. Borsos, Esquire (see Exhibit E).

If the minute entry applies to the March 6, 1986 motion, then Defendant asks the Court to sign and enter the attached order (see Exhibit F).

If the Court is of the opinion that the minute entry did not apply to the March 6, 1986 motion, then the Defendant asks the Court to now rule on and enter the appropriate order regarding the motion of Peter H. Waldo, Esquire, dated March 6, 1986.

Defendant has submitted a proposed order

to Plaintiffs' current counsel, Douglas J. Payne, Esquire, of the law firm of Fabian and Clendenin, but counsel has refused to sign although Defendant's counsel at the time of the June 20, 1988, Daniel R. Boone, Esquire has signed a proposed order (see Exhibit F and Exhibit G).

Pursuant to Rule 4-501(3) of the Code of Judicial Administration, a written request for a hearing is hereby made on this motion.

Richard Calder, acting pro se, hereby certifies to the Court that on January 22, 1991, he hand-delivered a copy of this motion and memorandum of points and authorities to Douglas J. Payne, Esquire, attorney for the Plaintiffs, at the law firm of Fabian and Clendenin, located at the 12th Floor, 215 South State Street, in Salt Lake City, Utah.

RESPECTFULLY SUBMITTED this 22nd day of January, 1991.

S/S

RICHARD CALDER, Pro Se

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IN THE DISTRICT COURT  
OF THE THIRD JUDICIAL DISTRICT  
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

---

DENNIS R. JOB and )  
RETA JOB, ) DEFENDANT'S MEMORAN-  
 ) DUM OF POINTS AND  
 Plaintiffs, ) AUTHORITIES ASKING  
 ) THAT THE JUDGMENT  
 vs. ) ENTERED ON FEBRUARY  
 RICHARD CALDER, ) 24, 1986 BE DECLARED  
 ) VOID BECAUSE THE  
 Defendant. ) DISTRICT COURT LACKED  
 ) JURISDICTION OR IN  
 ) THE ALTERNATIVE  
 ) DEFENDANT'S MEMOR-  
 ) ANDUM OF POINTS AND  
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 ) THE COURT TO ENTER  
 ) AN ORDER ON PLAINTIFFS' MOTION FOR  
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I. THE JUDGMENT ENTERED ON FEBRUARY 24, 1986  
IS VOID BECAUSE THE DISTRICT COURT LACKED  
JURISDICTION.

The District Court of the Third Judicial  
District in and for Salt Lake County, State of  
Utah, at the time the above case was tried  
on January 9 and 10, 1986, and at the time the

judgment was entered, February 24, 1986, and docketed, February 26, 1986, lacked jurisdiction to try the case, enter the judgment or docket the judgment.

The Defendant, Richard Calder, had filed a petition for relief under Chapter 13 in the United States Bankruptcy Court for the District of Utah, Case No. 84A-00492, on February 23, 1984 (see Exhibit A entitled Notice of Filing of Chapter 13 petition of this case). The bankruptcy was viable and pending as of January and February 1986 inasmuch as it was not dismissed until July 30, 1986.

The statutory support for the claim of lack of jurisdiction of the state court is 28 U.S.C. Section 1334 which provides that the United States District Court shall have original and exclusive jurisdiction, with an exception that is not applicable in the case at bar, of all cases under Title 11 of the United States Code. 28 U.S.C. Section 1334 further states that the United States District Court shall have original but not

exclusive jurisdiction of all civil proceedings arising under Title 11, or arising in or related to cases under Title 11. Section 1334 also provides that the United States District Court in which a case under Title 11 is commenced or pending shall have exclusive jurisdiction of all of the property, wherever located, of the debtor as of the commencement of the case, and the property of the estate.

The United States Supreme Court in Heiser v. Woodruff, 327 U.S. 726 (1946) at 736, stated, "Undoubtedly, since the Bankruptcy Act authorizes a proof of claim based on a judgment, such proof of claim may be assailed in the bankruptcy court on the ground that the purported judgment is not a judgment because of want of jurisdiction of the court which rendered it over the persons or the parties or the subject matter of the suit, or because it was procured by fraud of a party." The Supreme Court of the State of Utah in Brimhall v. Mecham, 494 F.2d

525 (1972) stated that a judgment is void if the court which rendered it lacked jurisdiction of the subject matter.

The State District Court in the case at bar did not have any jurisdiction over the subject matter pursuant to 28 U.S.C. Section 1334, and therefore pursuant to the ruling of the Supreme Court of the United States and the Supreme Court of the State of Utah, the judgment in the case at bar entered on February 24, 1986, is void and the State District Court should so order.

RESPECTFULLY SUBMITTED this 22nd day of January, 1991.

S/S  
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RICHARD CALDER, Pro Se